

**CITY OF FAIRFIELD**  
**RESOLUTION NO. 2012 - 182**

**A RESOLUTION OF THE CITY COUNCIL DECLARING A FISCAL EMERGENCY;  
CALLING AND PROVIDING FOR A SPECIAL MUNICIPAL ELECTION TO BE  
CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD IN  
THE CITY OF FAIRFIELD ON TUESDAY, NOVEMBER 6, 2012; APPROVING AN  
ORDINANCE ENACTING A TRANSACTIONS AND USE TAX TO BE  
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, AND ORDERING  
THE SUBMITTAL OF THE ORDINANCE TO THE VOTERS AT THE SPECIAL  
ELECTION**

**WHEREAS**, the City of Fairfield is facing an immediate budget crisis as a result of the State Legislature's adoption of AB X1 26 which eliminated redevelopment agencies in California resulting in cities across the state losing millions of dollars used to fund affordable housing, local job creation, and economic revitalization; and

**WHEREAS**, Sacramento has seized more than \$44 million dollars over the last three years from Fairfield to deal with their own budget deficits; and

**WHEREAS**, on April 3, 2012, the City Council unanimously adopted Resolution No. 2012-53 declaring a fiscal emergency; and

**WHEREAS**, on June 26, 2012, the City Council adopted a budget that indicated the need to cut \$7.75 million in the City's General Fund to address a structural deficit that resulted from State takeaways; and

**WHEREAS**, the City has implemented significant budget cuts since 2008 resulting in the elimination or reduction of key city programs and services such that further budget cuts will fundamentally impact the character of the community and quality of life; and

**WHEREAS**, the City has already cut \$37 million from its General Fund, reduced staffing levels by more than 20 percent resulting in the loss of 150 budgeted positions; and

**WHEREAS**, in order to address this fiscal emergency as soon as possible, the City Council desires to place a local funding measure on the ballot at the statewide general election on November 6, 2012; and

**WHEREAS**, if enacted, a local funding measure would provide a protected, local revenue source to limit or prevent additional cuts to police and fire services, and the closure or significant reduction in operating hours of facilities such as the Aquatics Complex at Allan Witt, Senior Center, Sports Center, and youth programs; and

**WHEREAS**, if enacted, a local funding measure would enable the City to maintain current levels of public safety and police services, including neighborhood patrols, crime and gang prevention programs; and

**WHEREAS**, if enacted, this measure requires Independent Citizens Oversight and mandatory financial audits to ensure funds will be properly spent; and

**WHEREAS**, if enacted, this measure consists of a five-year term and expires on March 31, 2018 in order to address the City's immediate financial crisis; and

**WHEREAS**, this measure will give Fairfield local control over local funds for local needs and no funds from this measure can be taken by Sacramento; and

**WHEREAS**, Section 7285.9 of the California Revenue and Taxation Code authorizes any city to levy, increase or extend a transactions and use tax for general purposes at a rate of 0.025 percent, or a multiple thereof, subject to approval by a two-thirds vote of all of the members of the City Council and by a majority of the qualified voters of the City voting in an election on the issue; and

**WHEREAS**, City Council proposes to submit to the voters of the City an ordinance providing for the levy of a transaction and use tax; and

**WHEREAS**, the revenues generated from the proposed cannot be legally taken by the state; and

**WHEREAS**, due to the City Council's declaration of a fiscal emergency, the Council may submit the proposed transaction and use tax as a special election pursuant to Section 2(b) of Article XIII C of the California Constitution.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:**

Section 1. Declaration of Emergency: The City Council hereby finds and declares by a unanimous vote that a fiscal emergency exists in the City of Fairfield. The City has suffered severe financial harm since 2008 from the Great Recession which was reflected by a very high number of home foreclosures, plummeting house values, a significant reduction in tax revenues and a rate of unemployment higher than the Solano County average. The City has cut \$37 million from its budget and eliminated 150 staff positions. Key City services were eliminated or significantly reduced, including adult recreation programs, building inspection, City Hall at the Mall, crime prevention, street maintenance, code enforcement, economic development, fire suppression, Fairfield Center for Creative Arts, fire prevention and inspections, neighborhood patrols, and the Quality Neighborhood Program, which addressed substandard housing conditions and blighted neighborhoods. In addition, the City eliminated sworn police officer positions and the crime suppression unit.

On June 28, 2011, the Governor signed AB X1 26 which eliminated redevelopment agencies in California. On February 1, 2012, the Fairfield Redevelopment Agency was dissolved under AB X1 26 with a significant reduction in revenues to the community. The City's General Fund will suffer a recurring net reduction of an estimated \$8 million per year in revenues due to AB X1 26. The annual loss of this revenue to the City is particularly devastating to City staffing and services due to the significant budget and staffing cuts that have already taken place since 2008.

If a new locally controlled revenue source is not established in 2012, even more drastic cuts in services will be required. Anticipated cuts include a significant reduction in police officers that could result in slower response times to 9-1-1 calls, fewer neighborhood patrols, more limited criminal investigations, and the elimination of crime prevention and code enforcement. Additional fire service reductions may also occur. The Senior Center, Aquatics Complex at Allan Witt, and the Sports Center at Allan Witt may be closed or hours of operation will be significantly curtailed. Street and park maintenance will be further reduced to unacceptable levels along with the maintenance and repair of other City infrastructure.

These types of cuts will fundamentally impact the community and degrade the quality of life. For the reasons stated in this section, it is essential that the City Council submit the proposed transaction and use tax to the voters at a municipal special election that will be consolidated with the statewide general election.

Section 2. Calling Special Municipal Election: Pursuant to California Elections Code Sections 9222 and 10201, the City Council hereby orders that a special municipal election in and for the City of Fairfield shall be held on Tuesday, November 6, 2012 for the purpose of approving a transaction and use tax measure. The full text of the Fairfield Transaction and Use Tax Ordinance, attached to this Resolution as Exhibit A shall be printed in the voter pamphlet. The measure to be submitted to the voters shall appear and be printed on the ballot as follows:

City of Fairfield	
To address the City of Fairfield's Fiscal Emergency, offset significant budget cuts and state financial takeaways, and maintain City services, including neighborhood police patrols, firefighters, 9-1-1 response times, crime, drug and gang prevention programs, maintenance of streets, medians and street lights, parks and recreation services, and other general services, shall an ordinance be adopted to enact a one cent sales tax for five years, with citizen's oversight, annual independent audits and all funds spent only in Fairfield?	YES
	NO

Section 3. Approval of Ordinance: The City Council hereby approves the proposed Fairfield Transaction and Use Tax Ordinance, attached to this Resolution as Exhibit A, to be submitted to the voters. The proposed measure is a general tax as defined in Article XIIC of the California Constitution and shall not take effect unless and until approved by a vote of at least a majority of the voters voting on the question at the election.

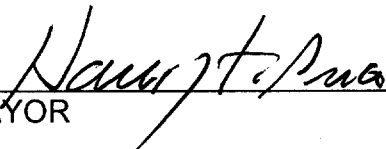
Section 4. Impartial Analysis: The City Attorney is hereby directed to prepare an impartial analysis of the measure pursuant to Elections Code Section 9280.

Section 5. Ballot Argument: The City Council hereby authorizes one or more of its members to submit a ballot argument in favor of the measure pursuant to Elections Code Section 9282.

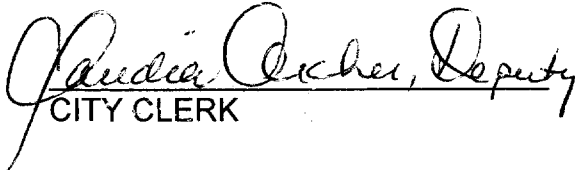
Section 6. Requesting Consolidation of Elections: Pursuant to the State of California Elections Code Sections 10400 – 10403.5, the City Council of the City of Fairfield hereby requests the consolidation of the special municipal election described in Section 2 with the statewide general election to be held on November 6, 2012. Within the City of Fairfield, the election precincts, polling places, and voting booths shall in every case be the same, and there shall be only one set of election officers in each of the precincts; provided that no person not a qualified elector of the City of Fairfield shall be permitted to vote for the measure placed on the ballot by the City Council. The election precincts, polling places, and election officers within the City of Fairfield for the special municipal election shall be the same as those selected and designated by the Solano County Registrar of Voters.

**PASSED AND ADOPTED** this 26th day of July, 2012, by the following vote:

AYES:	COUNCILMEMBERS:	<u>Price/Vaccaro/Bertani/Moy/Mraz</u>
NOES:	COUNCILMEMBERS:	<u>None</u>
ABSENT:	COUNCILMEMBERS:	<u>None</u>
ABSTAIN:	COUNCILMEMBERS:	<u>None</u>

  
MAYOR

ATTEST:

  
CITY CLERK

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FAIRFIELD  
IMPOSING A TRANSACTIONS AND USE TAX TO BE  
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

Section 1. A new Article VII is hereby added to Chapter 18 ("Taxation") of the Fairfield Municipal Code, to read as follows:

"18.70 TITLE. This ordinance shall be known as the Fairfield Transactions and Use Tax Ordinance. The City of Fairfield hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

18.71. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

18.72. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

18.73. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

18.74. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 1.0% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

18.75. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

18.76. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 1.0% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

18.77. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

18.78. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

18.79. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

18.80. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.



2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

18.81. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

18.82. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

18.83. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

18.84. INDEPENDENT FINANCIAL AUDIT. By no later than December 31 of each year, the City's independent auditors shall complete a Transactions and Use Tax Ordinance Compliance and Internal Control Audit Report. Such report shall review whether the tax revenues collected pursuant to this ordinance are collected, managed and expended in accordance with the requirements of this ordinance.

18.85. FAIRFIELD TAXPAYERS COMMITTEE. By no later than June 30, 2013, the City Council shall establish a Fairfield Taxpayers Committee to review the expenditure of revenues collected pursuant to this ordinance. The Committee shall consist of at least five members appointed by the City Council. The Committee members shall be residents and taxpayers in the City. The terms of the Committee members and their specific duties shall be established by resolution of the City Council.

18.86. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire on March 31, 2018, at 11:59 p.m."

Section 2. This ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately.

Section 3. The City Clerk shall certify the passage of this ordinance, publish or post the same as required by applicable law, and forward a copy of the adopted ordinance to the Board of Equalization.

**PASSED AND ADOPTED by the People of the City of Fairfield, State of California, on November 6, 2012.**

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
City Clerk